

# **EXHIBIT 1**

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C. Frederick Reish – March 25, 2022

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
CASE NO. 18-MD-2865 (LAK)

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IN RE: )  
)  
)

CUSTOMS AND TAX ADMINISTRATION OF )  
THE KINGDOM OF DENMARK )  
(SKATTEFORVALTNINGEN) TAX REFUND )  
SCHEME LITIGATION )  
-----)

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL  
EXAMINATION OF  
C. FREDERICK REISH

DATE: March 25, 2022

REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 record.

2 **Q** Sir, from your review of the facts  
3 in this matter, what is the closest fact  
4 pattern that you recall addressing personally  
5 over the course of your career, the closest  
6 to what you've reviewed in connection with  
7 this engagement?

8 **MR. MULLEN:** Objection.

9 **A** I've worked with -- I've worked  
10 with many one-person plans. I've seen a  
11 whole variety of investment strategies; hedge  
12 funds, real estate, on and on, handled all  
13 kinds of IRS audits of -- that involved plan  
14 assets among other things.

15 I mean, those are the first  
16 thoughts that come to mind.

17 **Q** So of all of that experience, all  
18 of those one-person plans, investment  
19 strategies, audits, what would you pick as  
20 the one for the facts that are closest to  
21 what we have here?

22 **MR. MULLEN:** Objection.

23 **MR. DILLMAN:** Objection.

24 **A** I don't think I can pick one. I  
25 mean, in -- some of the issues I've handled

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1 for some plans that are similar, like some of  
2 the permanence issues. Some, I've handled  
3 for other plans that are similar, like the  
4 exclusive benefit prohibited transaction  
5 issues.

6 But I can't think of a plan that  
7 had this particular -- of another plan that  
8 had this particular set of facts, the  
9 plan -- plans that had this particular set of  
10 facts and exactly or substantially similar  
11 circumstances.

12 **Q** So I won't hold you to -- to any  
13 identical facts, or even substantially  
14 similar facts.

15 But if you had to pull from your  
16 memory the closest factual scenario you've  
17 dealt with to the facts you've reviewed in  
18 this case, which -- which recollection, which  
19 fact pattern, comes to mind?

20 **MR. MULLEN:** Objection, asked and  
21 answered twice already.

22 **MR. DILLMAN:** Objection. Objection  
23 as to form.

24 **A** As I said a minute ago, with  
25 different issues, I've dealt -- I've handled

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1 analogous situations on different issues. I  
2 mentioned permanence as one example. I  
3 mentioned exclusive benefits and prohibited  
4 transactions as another issue.

5 These come up in -- often either in  
6 an IRS audit or with a plan sponsor client  
7 who thinks they made a mistake and they want  
8 me to review it and see if they did. So  
9 it's -- it's -- so that the  
10 circumstances -- my circumstances are defined  
11 by -- per the IRS audits and disqualifies  
12 plans -- or proposes to disqualify plans, or  
13 just audits for that matter, where the IRS  
14 audits plans, unless they get self-discovered  
15 or a possible mistake is self-discovered.

16 So there's nothing -- there are  
17 cases that have come to me with these legal  
18 issues, but there's no single case that's  
19 come to me with this particular set of facts  
20 and circumstances, or that I can think of  
21 that would be close enough to these facts and  
22 circumstances in totality to be able to say  
23 that it was similar.

24 **Q** Well, if we just take  
25 qualification, for instance, what's the --

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1 the case that has come to you that is closest  
2 to these facts and circumstances?

3 **MR. MULLEN:** Objection, asked and  
4 answered.

5 **MR. DILLMAN:** Objection.

6 **A** From my perspective, all of the  
7 issues in this case are qualification. And  
8 what I said a minute ago was that I  
9 don't -- I mean, I've had each of these  
10 issues come to me multiple times because the  
11 IRS focuses on that issue, and therefore,  
12 they can result in an audit, or they come to  
13 me because the IRS has focused on an issue  
14 and a person is -- and the plan sponsor is  
15 concerned that they may have, you know,  
16 inadvertently violated a qualification  
17 standard.

18 But -- so depending on the issue,  
19 the legal issue, I've got a ton of experience  
20 with the legal issues here. But to describe  
21 them, a client with an analogous set of  
22 circumstances viewed in totality, I can't  
23 think of one.

24 **Q** You've dealt with a great number of  
25 IRS audits.

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<p style="text-align: right;">Page 238</p> <p>1 materials that he cites in his report  2 are the materials that the -- that the  3 plan provided to the IRS. I mean, these  4 are all produced materials. You're  5 asking him a memory question about stuff  6 that's all determinable based on  7 produced documents.  8 <b>Q</b> Sir, you can answer the question.  9 <b>A</b> I remember looking at one or two of  10 the partnership agreements, but I can't  11 remember if that was because they were  12 produced to the IRS, or if I saw them  13 somewhere else, but -- in the discovery  14 materials.  15 But -- so I can't give you a  16 yes-or-no answer.  17 <b>Q</b> Now, sir, if you turn to Page 30 of  18 your reply report?  19 <b>A</b> Okay.  20 <b>Q</b> And in the first full paragraph at  21 the top of the page, do you see there you  22 say, "The audit lasted for almost two years?"  23 <b>A</b> Uh-huh, yes.  24 <b>Q</b> And you say you're "very confident  25 that it would not take two years to simply</p>	<p style="text-align: right;">Page 239</p> <p>1 reconcile the figures reported on the RJM  2 plans, Form 5500 EZ series filings, with  3 subsequent tax returns concerning  4 distributions."  5 Do you see that?  6 <b>A</b> Yes.  7 <b>Q</b> Now, what's your expectation as to  8 how long it would take to do that  9 reconciliation?  10 <b>A</b> I make that statement because in  11 Marcia Wagner's report, she said that the IRS  12 audits just reconciled numbers on the  13 Form 5500. That is pure nonsense. That's  14 just absolute nonsense.  15 IRS audits primarily focus on plan  16 qualification. And so the reason I stated it  17 that way was in response to a statement in  18 Marcia Wagner's report.  19 This -- in my experience, this was  20 an exhausting one. It was -- in fact, in the  21 letter, in the initial letter, it says -- the  22 whole -- this is the whole series of plan  23 qualification requirements that they're  24 gathering information for.  25 And I -- honestly, I don't know why</p>
<p style="text-align: right;">Page 240</p> <p>1 that appeared in the Wagner report. She  2 knows better than that.  3 The -- so I phrased it this way  4 because -- in order to respond to it. It's  5 really just paraphrasing what the Wagner  6 report said, and then saying that's not true.  7 The -- if you look at the  8 correspondence back and forth and over this  9 two-year period, the volume of information  10 requested is a multiple of what you  11 ordinarily see. It -- if I -- if there were  12 100 IRS audits, this would be in the top ten  13 in terms of the volume of information  14 requested relative to a plan of this size.  15 And my point there is that the  16 agent took a deep dive into this, requested  17 additional information that was pretty  18 standard, and then, in subsequent follow-up  19 letters, requested volumes of information  20 about, for example, other LLCs that were a  21 member of a controlled group, and requested  22 information about the investments, got a  23 description of the investment strategy, got  24 the K-1.  25 I mean, you know, it's hard for me</p>	<p style="text-align: right;">Page 241</p> <p>1 to explain to somebody that doesn't do IRS  2 audits as a part of their living, as a part  3 of their work, it's hard to explain, without  4 sounding like I'm overstating it, that this  5 was an exhausting audit.  6 This was not just an everyday, you  7 know, "come in, get some basic information,  8 review it, everything looks okay," you close  9 the audit. Here, the agent did take a deep  10 dive.  11 And most of the issues raised in  12 the Wagner reports actually got looked at  13 here, and then a "no change" letter was  14 issued at the end, meaning after all of that  15 review, the IRS had no change, no changes  16 were being requested. I mean, the most  17 obvious is "no change in the qualified status  18 of the plan," but also meaning they didn't  19 discover any prohibited transactions.  20 I don't know how to -- I mean, I  21 don't know how to make it clearer that this  22 was not just reconciling some numbers. I  23 just don't know any way to make it clearer  24 than what I just said.  25 <b>Q</b> And the information that was</p>